

XVII
MODEL LEGISLATIVE
PROVISIONS ON THE
RECRUITMENT OR USE
OF CHILDREN IN ARMED
CONFLICT

The following model legislative provisions are intended to be used by States as guidance in the drafting of legislation prohibiting the recruitment or use of children in armed conflict, with reference to the multiple sources of international law that create obligations upon States. The two standards presented here are:

- Option 1, which encapsulates what is widely known as the “straight 18” approach; and
- Option 2, which follows more strictly the existing provisions in treaty and custom.

The “straight 18” approach of Option 1 goes beyond the individual requirements of international treaty and customary law and offers a broader scope of protection by prohibiting all recruitment of persons under the age of 18 by armed forces or armed groups, and their participation in hostilities. Option 2 stays closer to the international obligations listed below. States wishing to implement only provisions from the Optional Protocol (2000) listed below may nonetheless find the present draft model legislative provisions useful. States wishing to implement only other specific norms and treaties may wish to consult examples from other countries’ legislation cited in this document, and to refer to model legislation available on the ICRC’s website (www.icrc.org).

In drafting these model legislative provisions the following sources of international law were considered:

- the Convention on the Rights of the Child (1989) (“CRC”);
- the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000) (“Optional Protocol”);
- the Rome Statute of the International Criminal Court (1998) (“Rome Statute”);
- International Criminal Court, Elements of Crimes (2002);
- ILO Convention No. 182 on the Worst Forms of Child Labour (1999) (“ILO 182”);
- Additional Protocols I and II of 1977 to the Geneva Conventions of 1949; as well as
- the ICRC Study on customary international humanitarian law (2005), including online updates to June 2012 (“Customary IHL Study”).

This document is divided into four parts:

- Part I contains the **text** of the model legislative provisions;
- Part II offers **commentary** on the text of the model legislative provisions, citing sources of international law and national legislation and practice;
- Part III indicates the relevant sections in the **sources** of international law; and
- Part IV sets out the relevant **national legislation** and other **practice**.

Part I: Model Legislative Provisions

Option 1 (“straight 18” approach)

1. Recruitment or use of children in armed conflict

No person shall:

- (a) recruit, conscript or enlist a person under the age of 18 years into armed forces or groups; or
- (b) use a person under the age of 18 years in hostilities.

2. Penalties

Any person who contravenes section 1 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.

Option 2 (narrower treaty and custom-based approach)

1. Forcible recruitment of persons under the age of 18 years

No person shall forcibly or compulsorily recruit a person under the age of 18 years into the armed forces.

2. Conscripting persons under the age of 15 years or using them in hostilities

No person shall:

- (a) recruit, conscript or enlist a person under the age of 15 years into the armed forces; or
- (b) use a person under the age of 15 years in hostilities.

3. Recruitment into or use in armed groups of persons under the age of 18 years

3.1 No person shall:

- (a) recruit a person under the age of 18 years into an armed group; or
- (b) use a person under the age of 18 years in hostilities.
- (c) This section does not apply to the recruitment or use of persons under the age of 18 years by the armed forces.

4. Penalties

4.1 Any person who contravenes section 1 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.

4.2 Any person who contravenes section 2 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.

4.3 Any person who contravenes section 3 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.

5. Regulations for recruitment into the armed forces

5.1 Members of the armed forces who have not attained the age of 18 years shall not directly participate in hostilities.

5.2 Persons between 15 and 17 years of age may be voluntarily recruited into the armed forces of a State, provided that the following safeguards are maintained:

- (a) Members of armed forces who have not attained the age of 18 years do not take a direct part in hostilities.
- (b) Such recruitment is genuinely voluntary.
- (c) Such recruitment is carried out with the informed consent of the person's parents or legal guardians.
- (d) Such persons are informed of the duties involved in such military service.
- (e) Such persons provide a reliable proof of age prior to acceptance into military service.

5.3 In recruiting those persons who have attained the age of 15 years but who have not attained the age of 18 years, priority will be given to those who are oldest.

Part II: Model Legislative Provisions with Commentary

Option 1 (“straight 18” approach)

1. Recruitment or use of children in armed conflict

No person shall:

- (a) recruit¹, conscript² or enlist³ a person under the age of 18 years⁴ into armed forces⁵ or groups⁶; or
- (b) use a person under the age of 18 years in hostilities.⁷

2. Penalties

Any person who contravenes section 1 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.⁸

Option 2 (narrower treaty and custom-based approach)

1. Forcible recruitment of persons under the age of 18 years

No person shall forcibly or compulsorily recruit⁹ a person under the age of 18 years¹⁰ into the armed forces.¹¹

2. Conscripting persons under the age of 15 years or using them in hostilities

No person shall:

- (a) recruit, conscript or enlist a person under the age of 15 years into the armed forces;¹² or
- (b) use a person under the age of 15 years in hostilities.¹³

3. Recruitment into or use in armed groups of persons under the age of 18 years

3.1 No person shall:

- (a) recruit a person under the age of 18 years into an armed group; or
- (b) use a person under the age of 18 years in hostilities.¹⁴
- (c) This section does not apply to the recruitment or use of persons under the age of 18 years by the armed forces.

4. Penalties

- 4.1 Any person who contravenes section 1 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.¹⁵
- 4.2 Any person who contravenes section 2 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.
- 4.3 Any person who contravenes section 3 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.

5. Regulations for recruitment into the armed forces

- 5.1 Members of the armed forces who have not attained the age of 18 years shall not directly participate in hostilities.¹⁶
- 5.2 Persons between 15 and 17 years of age may be voluntarily recruited into the armed forces of a State, provided that the following safeguards are maintained:

- (a) Members of armed forces who have not attained the age of 18 years do not take a direct part in hostilities.
- (b) Such recruitment is genuinely voluntary.
- (c) Such recruitment is carried out with the informed consent of the person's parents or legal guardians.
- (d) Such persons are informed of the duties involved in such military service.
- (e) Such persons provide a reliable proof of age prior to acceptance into military service.¹⁷

5.3 In recruiting those persons who have attained the age of 15 years but who have not attained the age of 18 years, priority will be given to those who are oldest.¹⁸

Part III: Sources of International Law

1. Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977)

Art. 77(2) Protection of Children

"The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest."¹⁹

2. Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977)

Art. 4(3)(c) Fundamental Guarantees

"Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities."²⁰

3. Convention on the Rights of the Child (1989)

Art. 38

- "1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict."²¹

4. Statute of the International Criminal Court (1998)

Art. 5(1)

"The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression."

“For the purpose of this Statute, “war crimes” means:

Art. 8(2)(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

[...]

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.”

[...]

Art. 8(2)(e) “Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

[...]

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.”²²

5. International Criminal Court, Elements of Crimes (2002)

In an international armed conflict

Art. 8(2)(b)(xxvi)

Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

“War crime of using, conscripting and enlisting children

1. The perpetrator conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.”

In a non-international armed conflict

Art. 8(2)(e)(vii)

Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.

“War crime of using, conscripting and enlisting

1. The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.”²³

6. ILO Convention No. 182 on the Worst Forms of Child Labour (1999)

Art. 1

“Each Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.”

Art. 2

“For the purposes of this Convention, the term *child* shall apply to all persons under the age of 18.”

Art. 3

“For the purposes of this Convention, the term *the worst forms of child labour* comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.”

Art. 7

“1. Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.”²⁴

7. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)

Art. 1

“States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.”

Art. 2

“States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.”

Art. 3

- “1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.
3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:
 - (a) Such recruitment is genuinely voluntary;
 - (b) Such recruitment is carried out with the informed consent of the person’s parents or legal guardians;

- (c) Such persons are fully informed of the duties involved in such military service;
 - (d) Such persons provide reliable proof of age prior to acceptance into national military service.
4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.
 5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child."

Art. 4

- "1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article shall not affect the legal status of any party to an armed conflict."²⁵

8. ICRC Customary IHL Study (2005)

Rule 136 of the ICRC Customary IHL Study provides that "children must not be recruited into armed forces or armed groups." Although Rule 136 does not define 'children', the Commentary to it does recognize that "although there is not, as yet, a uniform practice with respect to the minimum age for recruitment, there is agreement that it should not be below 15 years of age."

Rule 137 of the ICRC Customary IHL Study, provides that "children must not be allowed to take part in hostilities."²⁶

Rule 156 of the ICRC Customary IHL Study, provides that "serious violations of international humanitarian law constitute war crimes."²⁷

"A deductive analysis of the actual list of war crimes found in various treaties and other international instruments, as well as in national legislation and case-law, shows that violations are in practice treated as serious, and therefore as war crimes, if they endanger protected persons or objects or if they breach important values.

(i) *The conduct endangers protected persons or objects.* The majority of war crimes involve death, injury, destruction or unlawful taking of property. However, not all acts necessarily have to result in actual damage to persons or objects in order to amount to war crimes. This became evident when the Elements of Crimes for the International Criminal Court were being drafted. It was decided, for example, that it was enough to launch an attack on civilians or civilian objects, even if something unexpectedly prevented the attack from causing death or serious injury. This could be the case of an attack launched against the civilian population or individual civilians, even though, owing to the failure of the weapon system, the intended target was not hit. The same is the case for subjecting a protected person to medical experiments – actual injury is not required for the act to amount to a war crime; it is enough to endanger the life or health of the person through such an act.

(ii) *The conduct breaches important values.* Acts may amount to war crimes because they breach important values, even without physically endangering persons or objects directly. These include, for example, abusing dead bodies; subjecting persons to humiliating treatment; making persons undertake work that directly helps the military operations of the enemy; violation of the right to fair trial; and recruiting children under 15 years of age into the armed forces."²⁸

The commentary to Rule 156 lists under other serious violations of international humanitarian law "conscripting or enlisting children under the age of 15 into the armed forces or groups, or using them to participate actively in hostilities."²⁹

Part IV: Sources of National Legislation and Other Practice³⁰

1. Argentina

Argentina's Law of War Manual (1989) provides that "the belligerent parties shall take all measures to ensure that children under the age of 15 do not participate directly in hostilities."³¹

With respect to non-international armed conflicts in particular, the manual states: "Children under the age of 15 shall not ... be authorized to participate in hostilities."³²

2. Australia

1) Criminal Code Act (taking into account amendments up to Act No. 80 of 2011)

National armed forces

Section 268.68 War crime — using, conscripting or enlisting children

"(1) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator uses one or more persons to participate actively in hostilities as members of the national armed forces; and
- (b) the person or persons are under the age of 15 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years."

"(2) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator conscripts one or more persons into the national armed forces; and
- (b) the person or persons are under the age of 15 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years."

"(3) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator enlists one or more persons into the national armed forces; and
- (b) the person or persons are under the age of 15 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 10 years."

Other armed forces and groups

"(4) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator uses one or more persons to participate actively in hostilities other than as members of the national armed forces; and
- (b) the person or persons are under the age of 18 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 17 years."

"(5) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator conscripts one or more persons into an armed force or group other than the national armed forces; and
- (b) the person or persons are under the age of 18 years; and
- (c) the perpetrator's conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty: Imprisonment for 15 years."

“(6) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator enlists one or more persons into an armed force or group other than the national armed forces; and
- (b) the person or persons are under the age of 18 years; and
- (c) the perpetrator’s conduct takes place in the context of, and is associated with, an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.”

Section 268.88 War crime — using, conscripting or enlisting children

National armed forces

“(1) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator uses one or more persons to participate actively in hostilities as members of the national armed forces; and
- (b) the person or persons are under the age of 15 years; and
- (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.”

“(2) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator conscripts one or more persons into the national armed forces; and
- (b) the person or persons are under the age of 15 years; and
- (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years.”

“(3) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator enlists one or more persons into the national armed forces; and
- (b) the person or persons are under the age of 15 years; and
- (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 10 years.”

Other armed forces and groups

“(4) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator uses one or more persons to participate actively in hostilities other than as members of the national armed forces; and
- (b) the person or persons are under the age of 18 years; and
- (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 17 years.”

“(5) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator conscripts one or more persons into an armed force or group other than the national armed forces; and
- (b) the person or persons are under the age of 18 years; and
- (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty: Imprisonment for 15 years.”

“(6) A person (the **perpetrator**) commits an offence if:

- (a) the perpetrator enlists one or more persons into an armed force or group other than the national armed forces; and
- (b) the person or persons are under the age of 18 years; and
- (c) the perpetrator’s conduct takes place in the context of, and is associated with, an armed conflict that is not an international armed conflict.

Penalty for a contravention of this subsection: Imprisonment for 10 years.”³³

2) Australia’s LOAC Manual (2006) states that “children under 18 years of age should not take a direct part in hostilities.”³⁴

3) Australia’s Defence Instructions (General)

Recruitment and employment of members under 18 years in the Australian Defence Force, of 4 July 2008 states:

“11. ... [A]ll feasible measures are to be taken to ensure that minors are not deployed to an area of hostilities. That is, to the maximum extent possible, and where it will not adversely impact on the conduct of operations, minors should not be deployed into areas of operations where there is a likelihood of hostile action.

12. Where a minor is on the strength of a unit that is required to deploy to an area of hostility, that minor is not to deploy with the unit. In the case of a unit that is in transit or on exercise, and is required to deploy at short notice, minors in that unit must be returned to a safe area without undue delay.

13. A commander is not obliged to remove a minor from direct participation in hostilities where:

- a. circumstances beyond the control of the commander do not permit removal,
- b. where it would be more dangerous to the minor to attempt to do so, or
- c. where it would prejudice the effectiveness of the mission.

However, nothing in this paragraph relieves a commander of the obligation to do everything possible within their power to prevent minors from participating directly in hostilities.

14. There should be very few circumstances in which the above requirement could not be met. The most obvious exception relates to Navy. Where a minor is serving in a ship that is diverted at short notice to an area of hostility, and it is not possible for that minor to be landed at the nearest safe port prior to the vessel continuing to the area of operations, that minor is to remain with their ship.”³⁵

3. Azerbaijan

1) The Criminal Code (1999) provides that “recruiting minors into the armed forces constitutes a war crime.”³⁶

2) The Law on the Rights of the Child (1998) states that “direct participation in military operations of children under 15 years old is prohibited.”³⁷

4. Belarus

1) The Law on the Rights of the Child (1993) provides that it is “prohibited to make children participate in hostilities and armed conflicts.”

2) The Criminal Code (1999) provides that “it is a war crime to allow children under the age of 15 years to take part in hostilities.”

5. Belgium

The Criminal Code (amended in 2003), article 136 (*quater*, para 1, point 7) defines “the recruitment of children under the age of 15 into armed forces or armed groups as well as the act of actively involving children under the age of 15 in hostilities” as war crimes.⁴⁰

6. Cameroon

The Instructor’s Manual (2006) states that “children below the age of 15 ... cannot be recruited into the Armed Forces.”⁴¹

The Manual also states: “Parties to the conflict are obliged not to engage children under the age of fifteen in direct participation in hostilities...”⁴²

7. Canada

- 1) The LOAC Manual (2001) states in its chapter on non-international armed conflicts: “[The 1977 Additional Protocol II] provides that children are to receive such aid and protection as required including: [...] c. a ban on their enlistment or participation in the hostilities while under the age of fifteen.”⁴³
- 2) The National Defence Act (1985) states: “A person who is under the age of eighteen years may not be deployed by the Canadian Forces to a theatre of hostilities.”⁴⁴
- 3) The Crimes Against Humanity and War Crimes Act (2000) provides in section 4(1) that “every person is guilty of an indictable offence who commits (b) a crime against humanity or (c) a war crime”.

Section 3 of the Act defines a crime against humanity as “any inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations whether or not it constitutes a contravention of the law in force at the time and in the place of its commission”.

Section 3 also defines a ‘war crime’ as “an act or omission committed during an armed conflict that at the time and in the place of its commission constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission”.

Section 3(4) further provides that “for greater certainty crimes described in article 8, paragraph 2 of the Rome Statute are crimes according to customary international law.”⁴⁵ This squarely brings conscripting and enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities as stipulated under art. 8(2)(e)(vii) and 8(2)(b)(xxvi) within the scope of crimes against humanity and war crimes under the Act.

8. Colombia

- 1) The Law on Judicial Cooperation (1997) states that “children under 18 may not be sent to participate in actual military activities.”⁴⁶
- 2) The Colombian Penal Code (Law No. 599 of 2000) in article 162 provides that a “person who recruits minors below the age of 18 years or who forces them to participate directly or indirectly in hostilities or in armed operations, will incur a prison sentence ranging from six to ten years and a fine.”⁴⁷ This provision is applicable to both illegal armed groups as well as armed forces and the definition of crime includes both direct as well as indirect participation of children in hostilities, including the use of children for intelligence.
- 3) In addition, the Law on Childhood and Adolescence No. 1098 (2006) prohibits “the use and recruitment of children by armed groups, and also prohibits any act violative of ILO Convention No. 182.”⁴⁸

- 4) The Basic Military Manual (1995) provides, with respect to non-international armed conflicts in particular, that it is prohibited to “recruit and allow direct participation in hostilities of children under the age of 15”.⁴⁹

9. Congo

The Congo’s Genocide, War Crimes and Crimes against Humanity Act (1998) defines war crimes “with reference to the categories of crimes defined in art. 8 of the 1998 ICC Statute”.⁵⁰

10. Denmark

The Military Criminal Code (2005) provides:

“Any person who deliberately uses war means [“krigsmiddel”] or procedures the application of which violates an international agreement entered into by Denmark or international customary law, shall be liable to the same penalty [i.e. imprisonment up to life imprisonment].”⁵¹

11. Ethiopia

- 1) Section 4(3) of the Defence Force Proclamation No. 27/1996 provides that “the Defence Ministry may recruit persons who are fit and willing for military purposes. The minimum age for recruitment is 18 years”.⁵²
- 2) The Criminal Code (2004) provides in section 270(m), entitled War Crimes against the Civilian Population, that “whoever in time of war, armed conflict or occupation organizes, orders or engages in, against the civilian population and in violation of the rules of public international law and of international humanitarian conventions by recruiting children who have not attained the age of 18 years as members of defense forces to take part in armed conflict is punishable with rigorous imprisonment from 5 – 20 years or, in more serious cases, with life imprisonment or death”.⁵³

12. Finland

The Criminal Code of Finland provides in chapter 11, section 5(1)(5), entitled ‘war crime’, that “a person in connection with a war or other international or domestic armed conflict or occupation in violation of other rules and customs of international law on war, armed conflict or occupation takes or recruits children below the age of 18 years into military forces or into groups in which they are used in hostilities should be sentenced for a war crime to imprisonment for at least one year or for life”.⁵⁴ It further provides in chapter 11 section 5(2) that “a person who commits another act defined under article 8 of the Rome Statute of the International Criminal Court or in another manner violates the provisions of an international agreement on war, armed conflict or occupation that is binding on Finland or the generally recognized and established laws and customs of war in accordance with international law shall be sentence for a war crime”.⁵⁵

13. Fiji

The Employment Relations Promulgation (2007) in section 91(a) prohibits the “forced or compulsory recruitment of children in armed conflict [...] and that a person who engages in such prohibited form of child labour commits an offence”.⁵⁶ Section 256 further provides that “a person who commits an offence under this Promulgation for which no particular penalty is provided is liable on conviction for an individual, to a fine not exceeding USD 10,000 or to a term of imprisonment not exceeding 2 years or both”.⁵⁷

14. France

The LOAC Manual (2001) provides: “Only children aged at least 15 can participate in hostilities”, adding that “to make them participate directly in hostilities is a war crime.” The manual states, however: “A child who does take part in an armed conflict shall benefit, because of his military activity, from the status of combatant and of prisoner of war in case of capture.”⁵⁸

15. Germany

- 1) The Military Manual (1992) provides: "The parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take direct part in hostilities."⁵⁹
- 2) The Law Introducing the International Crimes Code (2002) punishes anyone who, in connection with an international or non-international armed conflict, "conscripts children under the age of fifteen years into the armed forces, or enlists them in the armed forces or in armed groups"⁶⁰

16. Georgia

Georgia's Criminal Code (1999) provides that "any war crime provided for by the 1998 ICC Statute, which is not explicitly mentioned in the Code, such as using [children under the age of 15 years] to participate actively in hostilities, is a crime in both international and non-international armed conflicts"⁶¹

17. Greece

The Penal Code in art. 323(a) provides "sanctions for the recruitment of under age persons by force, threats, deceptive means or by promises or other benefits for armed conflict". Section 1(1) of Law No. 1763/1988 (as amended by Law No. 2510 of June 1997) on military service provides that, "men from January 1 of the year during which they turn 19 are liable for military service with the armed forces". Section 1(2) of the same law provides that "all Greek males may be called upon to join the armed forces from January 1 of the year they reach 18 to cover increased mobilization needs".

18. Indonesia

Art. 63 of the Republic of Indonesia Law No. 23 (2002) provides that "all persons are prohibited from recruiting or equipping children for military or similar purposes and from putting the lives of children in danger"⁶² The corresponding penalty is listed under art. 87, which provides for "imprisonment of no more than five years and/or a maximum fine of 100 million Rupiah (USD 11,000) for recruiting and equipping children for military purposes or misusing children by using them in an armed conflict"⁶³

19. Ireland

Ireland's Geneva Conventions Act (1962), as amended in 1998, provides that "any minor breach of the 1949 Geneva Conventions, including violations of art. 50 of the Geneva Convention IV, and of the 1977 Additional Protocol I, including violations of art. 77(2), as well as any "contravention" of the 1977 Additional Protocol II, including violations of art. 4(3)(c), are punishable offences"⁶⁴

20. Jordan

The Military Service Law No. 2 (1972) provides that "children under 16 years old may not be enlisted in the armed forces"⁶⁵

21. Kenya

- 1) The LOAC Manual (1997) states: "Children under the age of 15 shall not be recruited into the armed forces."⁶⁶
- 2) The Children Act (2001) in section 10(2) provides that "no child shall take part in hostilities or be recruited in armed conflicts, and where armed conflict occurs, respect for and protection and care of children shall be maintained in accordance with the law". Further, section 20 provides "where any person wilfully or as a consequence of culpable negligence infringes any rights of a child as specified in section 5 to 19 such person shall be liable upon summary conviction to a term of imprisonment not exceeding twelve months, or to a fine not exceeding fifty thousand shillings or to both such imprisonment and fine"⁶⁷

22. Kyrgyzstan

The Criminal Code of the Kyrgyz Republic (as amended in 2006) in art. 124, entitled Traffic in Persons, provides that “trafficking including recruiting, transport, harbouring, reception, transfer, purchase and sale of a person or another unlawful transaction using force, deception, fraud, kidnapping for the purpose of further exploitation shall be punishable by up to five years of restricted liberty or three to eight years of imprisonment with or with no property seizure”. Exploitation has been defined in this section to include use in armed conflict. Further, section 124(3) provides that “the same act committed towards a juvenile shall be punishable by 8 to 15 years of imprisonment with property seizure”.⁶⁸

23. Libyan Arab Jamahiriya

Law No. 40 on Service in the Armed Forces provides that “no one under the age of seventeen years” may serve in the armed forces.⁶⁹

24. Lithuania

Criminal Code art. 105. Forcible Use of Civilians or Prisoners of War in the Armed Forces of the Enemy.

- “1. A person who, in time of war, during an armed international conflict, occupation or annexation and in violation of international humanitarian law, forces civilians or prisoners of war to serve in the armed forces of their enemy, uses them as a human shield in a military operation, conscripts or recruits children under the age of 18 years into the armed forces or uses them in a military operation shall be punished with imprisonment for a term of three up to ten years.”
- “2. A person who conscripts or recruits children under the age of 18 years into military service in the military groups not belonging to the armed forces of the State or uses them in a military operation shall be punished by imprisonment for a term of three up to twelve years.”⁷⁰

25. Malawi

The National Service Act (1951) states that “no person under the age of 18 years shall be liable for military service”.⁷¹

26. Malaysia

Armed Forces Act (1972) establishes “a minimum age of 18 for anyone to be considered for enrolment or recruitment in the armed forces. Persons below the age of 18 may be appointed as apprentices, but they are not considered as recruits and are therefore not subjected to service law.”⁷²

27. Mali

According to the Penal Code (2001), “conscripting or enlisting children under the age of fifteen years into the national armed forces or groups” constitutes a war crime in international armed conflicts.⁷³

28. Montenegro

According to section 444 (1) of the Criminal Code “any person who by force/threat or deceit [...] recruits, transports or transfers [...] a person for use in armed conflict shall be punished by imprisonment [...]”. Section 444(2) provides that “if the offence referred to in Paragraph 1 of this Article is committed to a juvenile person, the offender shall be liable to imprisonment prescribed for that offence, even if there was no force, threat or any other of the stated methods present in the commission of the crime”.⁷⁴

29. Netherlands

- 1) The Military Manual (2005) states: "Parties to a conflict should ensure that children under the age of 15 play no direct part in hostilities. Therefore they may not be drafted into the armed forces."⁷⁵
- 2) International Crimes Act (2003)

Section 5(5)

"Anyone who, in the case of an international armed conflict, commits one of the following acts: [...]

(r) conscripting or enlisting children under the age of fifteen years into the national armed forces or armed groups or using them to participate actively in hostilities [...] shall be liable to a term of imprisonment not exceeding fifteen years or a fifth category fine."

Section 6(3)

"Anyone who, in the case of an armed conflict not of an international character, commits one of the following acts: [...]

(f) conscripting or enlisting children under the age of fifteen years into the national armed forces or armed groups or using them to participate actively in hostilities [...] shall be liable to a term of imprisonment not exceeding fifteen years or a fifth category fine."⁷⁶

30. Nicaragua

Article 509 of the Penal Code further provides that "any person who during an international or non-international armed conflict recruits or enlists individuals under eighteen years in the armed forces or uses them to participate actively in hostilities, shall be punished with imprisonment from ten to fifteen years"⁷⁷

31. New Zealand

- 1) The Military Manual (1992) provides, with respect to non-international armed conflicts in particular, that children "are to receive such aid and protection as they require, including ... a ban on their enlistment ... while under the age of fifteen"⁷⁸
- 2) International Crimes and International Criminal Court Act (2000)

Article 11 War crimes

"(1) Every person is liable on conviction or indictment to the penalty specified in subsection (3) who, in New Zealand or elsewhere, commits a war crime.

(2) For the purposes of this section, a war crime is an act specified in---

- (a) article 8(2)(a) of the Statute (which relates to grave breaches of the First, Second, Third, and Fourth Geneva Conventions); or
- (b) article 8(2)(b) of the Statute (which relates to other serious violations of the laws and customs applicable in international armed conflict); or
- (c) article 8(2)(c) of the Statute (which relates to armed conflict not of an international character involving serious violations of article 3 common to the 4 Geneva Conventions of 12 August 1949); or
- (d) article 8(2)(e) of the Statute (which relates to other serious violations of the laws and customs applicable in armed conflict not of an international character).

(3) The penalty for a war crime is,---

- (a) if the offence involves the wilful killing of a person, the same as the penalty for murder.
- (b) in any other case, imprisonment for life or a lesser term.

(4) Nothing in this section affects or limits the operation of section 3 of the Geneva Conventions Act 1958 (which makes a grave breach of the Geneva Conventions an offence under New Zealand law).⁷⁹

32. Nigeria

- 1) Nigeria's Child Rights Act (2003) states: "No child shall be recruited into any of the branches of the armed forces of the Federal Republic of Nigeria."⁸⁰

The Act defines a child as "a person under the age of eighteen years."⁸¹

- 2) Nigeria's Military Manual (1994) states: "Children under 15 years shall not be recruited."⁸²

33. Norway

The Military Penal Code (1902), as amended in 1981, provides:

"Anyone who contravenes or is accessory to the contravention of provisions relating to the protection of persons or property laid down in ... the Geneva Conventions of 12 August 1949 ... [and in] the two additional protocols to these Conventions ... is liable to imprisonment."⁸³

34. Philippines

- 1) The Philippine Army Soldier's Handbook on Human Rights and International Humanitarian Law (2006) provides:

"4. Do not allow any person below 18 years old to take part in the armed conflict. Children shall be considered as zones of peace and shall enjoy the protection of the State against dangers arising from an armed conflict. Children shall not be recruited or employed by the government forces to perform or engage in activity necessary to and in direct connection with an armed conflict either as a soldier, guide, courier or in a similar capacity which would result in his being identified as an active member of an organized group that is hostile to the government forces."⁸⁴

In its glossary, the Handbook further notes: "Children – refers to persons below 18 years of age or those over but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."⁸⁵

- 2) The Republic Act No. 7610, An Act on Child Protection of Children Against Abuse, Exploitation and Discrimination (1992) of the Philippines, in an article on "Children in situations of armed conflict", provides: "Children shall not be recruited to become members of the Armed Forces of the Philippines, of its civilian units or other armed groups, nor be allowed to take part in the fighting or used as guides, couriers or spies."⁸⁶
- 3) The Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity (2009) provides in section 4(c)(24) that "war crimes or crimes against international humanitarian law includes other serious violations of the laws and customs applicable in armed conflict within the established framework of international law including:
 - (i) Conscripting, enlisting or recruiting children under the age of fifteen (15) years into the national armed forces;
 - (ii) Conscripting, enlisting or recruiting children under the age of 18 years into an armed force or groups other than the national armed forces;
 - (iii) Using children under the age of eighteen (18) years to participate actively in hostilities."⁸⁷

Section 7 outlines penalties and provides in relevant parts that "any person found guilty of committing any of the Act provided under section 4 shall suffer the penalty of reclusion temporal in its medium to maximum period and a fine ranging from one hundred thousand pesos (Php 100,000.00) to Five hundred thousand pesos (php 500,000.00)".

"When justified by the extreme gravity of the crime, especially where the commission of any of the crimes specified herein results in death or serious physical injury or constitutes rape and considering the individual circumstances of the accused, the penalty of reclusion perpetual and a fine ranging from Five hundred thousand pesos (Php 500,000.00) to One million pesos (Php 1,000,000.00) shall be imposed."⁸⁸

Section 8 outlines both individual criminal responsibility as a principal for a crime as well as criminal liability as an accomplice for aiding, abetting or otherwise assisting in the commission of the crime.⁸⁹

- 4) Republic Act No. 9231, An Act Providing for the Elimination of the Worst Forms of Child Labour (2003) provides in section 12(d)(1) that “no child shall be engaged in the worst forms of child labour which includes the forced or compulsory recruitment of children for use in armed conflict.”⁹⁰

Section 16(b) outlines the Penal Provisions and provides that “any person who violates the provision of 12(d) of this Act shall suffer the penalty of a fine of not less than one hundred thousand pesos (P100,000.00) but not more than One million pesos (P1,000,000.00) or imprisonment of not less than twelve (12) year and one (1) day to twenty (20) years, or both such fine and imprisonment at the discretion of the court.”

Section 16(c) provides that “any person who violates sections of 12(d)(1) shall be prosecuted and penalized in accordance with the penalty provided for by the Anti-Trafficking in Persons Act (2003).”⁹¹

35. Qatar

The Law on Military Service (2006) provides that a person appointed to military service may “not be under the age of eighteen.”⁹²

36. Republic of Korea

The ICC Act (2007) provides for the punishment of anyone who commits the war crime of “[c]onscripting children under the age of fifteen years into the armed forces or in armed groups, or enlisting them in the armed forces or in armed groups” in both international and non-international armed conflicts.⁹³

37. Russian Federation

- 1) Russian Federation Regulations on the Application of IHL (2001) state with regard to internal armed conflict: “Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.”⁹⁴
- 2) The Criminal Code (taking into account amendments up to 2004) states that “recruitment, training, financing, or any other material provision of a mercenary, and also the use of him in an armed conflict or hostilities, committed by a person through his official position, or with relation to a minor, shall be punishable by deprivation of liberty for a term of seven to fifteen years, with or without a fine in the amount of up to 500 thousand roubles or in the amount of the wage or salary, or any other income of the convicted person for a period of up to three years.”⁹⁵

38. Rwanda

- 1) The Law Relating to Rights and Protection of the Child against Violence (2001) provides: “Military service is prohibited for children less than 18 years.”⁹⁶
- 2) The Presidential Order Establishing Army General Statutes (2002) provides in Article 5:

“For anybody to qualify for recruitment into the Rwanda Defence Forces, he [must fulfil the] following conditions:

[...]

To be at least 18 years old minimum.”⁹⁷
- 3) The Law Repressing the Crime of Genocide, Crimes against Humanity and War Crimes (2003) provides:

“Article: 10: “War crime” shall also mean any of the following acts committed in armed conflicts:

[...]

8° forcing civilians, including children under eighteen (18) years, to take part in hostilities or to perform works related to military purposes;

[...]

Article 11: Anyone who commits one of the war crimes provided for in Article 10 of this law shall be punished by the following penalties:

[...]

2° imprisonment for ten (10) to twenty (20) years, where he has committed a crime provided for in point 3°, 8°, 11° or 12° of Article 10 of this law.”⁹⁸

39. Slovenia

Penal Code (2007), Article 378

“Whoever, during wartime, armed conflict or occupation or when carrying out or supporting the policy of a state or organisation as part of a larger systematic attack, orders or carries out the conscription of persons under 18 years of age into national or other armed forces and their exploitation for active participation in hostilities, shall be sentenced to imprisonment of not less than ten years.”⁹⁹

40. South Africa

The ICC Act (2002) reproduces the war crimes listed in the 1998 Rome Statute, including “conscripting or enlisting children under the age of fifteen years” into national armed forces in international armed conflicts or into armed forces or groups in non-international armed conflicts.¹⁰⁰

41. Spain

- 1) Under the Penal Code (1995), breaches of international treaty provisions providing for special protection of children are punished.¹⁰¹
- 2) Spain’s LOAC Manual (1996) provides: “All possible means shall be taken, within the limits of military necessity, to avoid recruiting children under 15.”¹⁰²

42. Sri Lanka

- 1) Section 358A of the Penal Code provides that “any person who engages or recruits a child for use in armed conflict shall be guilty of any offence and is liable to imprisonment for a term not exceeding thirty years and a fine.”¹⁰³
- 2) Furthermore, the Employment of Women, Young Persons and Children Act (2006) provides in art. 20A that “no person under the age of 18 years shall be employed in any hazardous occupation”.¹⁰⁴ A list of 49 hazardous occupations to be read with article 20A of the Act was subsequently published in the Government Gazette. This list includes the use of children in armed conflict and brings it squarely within the scope of protection of the Act.¹⁰⁵ As a penalty, the Act provides that, “any person who employs a person in contravention of this prohibition will be guilty of an offence and shall on conviction be liable to a fine not exceeding ten thousand rupees or to imprisonment for a period not exceeding 12 months or both and shall also be ordered to pay compensation as may be determined by the Magistrate to the victim of the offence”.¹⁰⁶

43. Switzerland

Criminal Code (status as of 1 January 2012)

Art. 264f Recruitment and use of child soldiers

- “ 1. The penalty shall be a custodial sentence of not less than three years for any person who enlists a child under the age of fifteen years into armed forces or groups or recruiting them for this purpose or using them to participate in armed conflicts.
2. In especially serious cases, and in particular where the offence affects a number of children or the offender acts in a cruel manner, a custodial sentence of life may be imposed.
3. In less serious cases, a custodial sentence of not less than one year may be imposed.”¹⁰⁷

44. Uganda

The Defence Forces Act (2005) provides: “No person shall be enrolled into the Defence Forces unless he or she ... is at least 18 years of age”.¹⁰⁸

45. Ukraine

- 1) The IHL Manual (2004):

As regards children, international humanitarian law envisages the following:

“children who have not attained the age of fifteen years shall not be allowed to take part in hostilities.”¹⁰⁹

- 2) The Military Service Law (1992) states that “18 years is the recruitment age for the armed forces. Adolescents of 15 to 17 years old can enter military schools after having passed a medical examination. Military education and military service for persons who have not reached 15 years of age are forbidden.”¹¹⁰

46. United Kingdom

- 1) The LOAC Manual (2004) states in its chapter on the protection of civilians in the hands of a party to the conflict: “Steps must be taken to ensure that those aged under fifteen years are not recruited into the armed forces and do not take a direct part in hostilities. Moreover, where there is recruitment of young persons aged between fifteen and eighteen years, priority is to be given to the oldest.”

With regard to internal armed conflict, the manual states:

“15.7. It is prohibited to conscript or enlist children under the age of fifteen years into armed forces or groups” or to use them “to participate actively in hostilities.”¹¹¹

- 2) The International Criminal Court Act (2001)

Art. 50(1)

“In this Part –
‘war crime’ means a war crime as defined in article 8.2 of the Rome Statute.”

Schedule 8

Article 8

“For the purpose of this Statute, ‘war crime’ means:

2(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

[...]

2(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.”¹¹²

47. United States

“Public Law 110–340
110th Congress

An Act to prohibit the recruitment or use of child soldiers, to designate persons who recruit or use child soldiers as inadmissible aliens, to allow the deportation of persons who recruit or use child soldiers, and for other purposes.¹¹³

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Child Soldiers Accountability Act of 2008”.

SEC 2. ACCOUNTABILITY FOR THE RECRUITMENT AND USE OF CHILD SOLDIERS.

(a) CRIME FOR RECRUITING OR USING CHILD SOLDIERS.—

(1) IN GENERAL.—Chapter 118 of title 18, United States Code, is amended by adding at the end the following:

“§ 2442. Recruitment or use of child soldiers

“(a) OFFENSE.—Whoever knowingly—

“(1) recruits, enlists, or conscripts a person to serve while

such person is under 15 years of age in an armed force or group; or

“(2) uses a person under 15 years of age to participate actively in hostilities;

knowing such person is under 15 years of age, shall be punished as provided in subsection (b).

“(b) PENALTY.—Whoever violates, or attempts or conspires to violate, subsection (a) shall be fined under this title or imprisoned not more than 20 years, or both and, if death of any person results, shall be fined under this title and imprisoned for any term of years or for life.

“(c) JURISDICTION.—There is jurisdiction over an offense described in subsection (a), and any attempt or conspiracy to commit such offense, if—

“(1) the alleged offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)));

“(2) the alleged offender is a stateless person whose habitual residence is in the United States;

“(3) the alleged offender is present in the United States, irrespective of the nationality of the alleged offender; or

“(4) the offense occurs in whole or in part within the United States.

“(d) DEFINITIONS.—In this section:

“(1) PARTICIPATE ACTIVELY IN HOSTILITIES.—The term ‘participate actively in hostilities’ means taking part in—

“(A) combat or military activities related to combat, including sabotage and serving as a decoy, a courier, or at a military checkpoint; or

“(B) direct support functions related to combat, including transporting supplies or providing other services.

“(2) ARMED FORCE OR GROUP.—The term ‘armed force or group’ means any army, militia, or other military organization, whether or not it is state-sponsored, excluding any group assembled solely for nonviolent political association.”

(2) STATUTE OF LIMITATIONS.—Chapter 213 of title 18, United States Code is amended by adding at the end the following:

§ 3300. Recruitment or use of child soldiers

“No person may be prosecuted, tried, or punished for a violation of section 2442 unless the indictment or the information is filed not later than 10 years after the commission of the offense.”

(3) CLERICAL AMENDMENT.—Title 18, United States Code, is amended—

(A) in the table of sections for chapter 118, by adding at the end the following:

“2442. Recruitment or use of child soldiers”; and

(B) in the table of sections for chapter 213, by adding at the end the following:

“3300. Recruitment or use of child soldiers.”

- (b) GROUND OF INADMISSIBILITY FOR RECRUITING OR USING CHILD SOLDIERS.—Section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)) is amended by adding at the end the following:
- “(G) RECRUITMENT OR USE OF CHILD SOLDIERS.—Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code, is inadmissible.”
- (c) GROUND OF REMOVABILITY FOR RECRUITING OR USING CHILD SOLDIERS.—Section 237(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)) is amended by adding at the end the following:
- “(F) RECRUITMENT OR USE OF CHILD SOLDIERS.—Any alien who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code, is deportable.”
- (d) ASYLUM AND WITHHOLDING OF REMOVAL.—
- (1) ISSUANCE OF REGULATIONS.—Not later than 60 days after the date of enactment of this Act, the Attorney General and the Secretary of Homeland Security shall promulgate final regulations establishing that, for purposes of sections 241(b)(3)(B)(iii) and 208(b)(2)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)(iii); 8 U.S.C. 1158(b)(2)(A)(iii)), an alien who is deportable under section 237(a)(4)(F) of such Act (8 U.S.C. 1227(a)(4)(F)) or inadmissible under section 212(a)(3)(G) of such Act (8 U.S.C. 1182(a)(3)(G)) shall be considered an alien with respect to whom there are serious reasons to believe that the alien committed a serious nonpolitical crime.
- (2) AUTHORITY TO WAIVE CERTAIN REGULATORY REQUIREMENTS.—
- The requirements of chapter 5 of title 5, United States Code (commonly referred to as the “Administrative Procedure Act”), chapter 35 of title 44, United States Code (commonly referred to as the “Paperwork Reduction Act”), or any other law relating to rulemaking, information collection, or publication in the Federal Register, shall not apply to any action to implement paragraph (1) to the extent the Attorney General or the Secretary of Homeland Security determines that compliance with any such requirement would impede the expeditious implementation of such paragraph.

Approved October 3, 2008.”

Notes

- 1 The term 'recruits' is used in AP I, art. 77(2), AP II, art. 4(3)(c) and the Optional Protocol, art. 4(1).

The term can also be found in the following national laws and military manuals. The military manuals referred to in this document are cited in the ICRC Customary IHL Study (2005) and in certain cases reiterate the State's international obligations without necessarily adding implementing legislation.

1. Azerbaijan: Criminal Code, art. 116.0.5 (1999);
 2. Belgium: Criminal Code, art. 136 (*quater*, para 1, point 7) (amended in 2003);
 3. Cameroon: Instructor's Manual, at p. 90, section 351(5) (2006);
 4. Colombia: Penal Code (Law No. 599 of 2000), section 162 (2000); Law on Childhood and Adolescence No. 1098, art. 20(7) (2006); Basic Military Manual, at p. 75 (1995);
 5. Ethiopia: Criminal Code, section 270(m) (2004);
 6. Finland: Criminal Code, chapter 11, section 5(5) (amendments up to 940/ 2008);
 7. Fiji: Employment Relations Promulgation, section 91(a) (2007);
 8. Greece: Penal Code, art. 323(a);
 9. Indonesia: Law No. 23, art. 63 (2002);
 10. Kenya: The Children Act, sections 10(2) and 29 (No. 8 of 2001); Law of Armed Conflict Military Basic Course, The School of Military Police at p. 8;
 11. Kyrgyz Republic: Criminal Code, art. 124 (as amended in 2006);
 12. Lithuania: Criminal Code, section 105(2) (last amended in 2008);
 13. Malaysia: Armed Forces Act, section 18 (1972);
 14. Montenegro: Criminal Code, section 444(1) (Official Gazette of the Republic of Montenegro No. 70/2003, and Correction, No. 13/2004);
 15. Nicaragua: Penal Code, art. 509 (2008);
 16. Nigeria: Child Rights Act, section 34(1) (2003);
 17. Philippines: Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24) (2009); Republic Act No. 9231, An Act providing for the Elimination of the Worst Forms of Child Labour, section 12(d)(1) (2003); Republic Act No. 7610, An Act on Special Protection of Children against Abuse Exploitation and Discrimination, art. X, section 22(b) (1992);
 18. Russian Federation: Regulation on the Application of IHL, section 81 (2001); Criminal Code, art. 359(2) (taking into account amendments as of 2004);
 19. Rwanda: Presidential Order Establishing Army General Statutes, art. 5 (2002);
 20. Spain: LOAC Manual, vol. 1, section 1.3(c)(1) (1996);
 21. Sri Lanka: Penal Code, section 358A (2006);
 22. Switzerland: Criminal Code, section 264(f) (2012);
 23. Ukraine: Military Service Law, art. 15 (1992);
 24. United Kingdom: LOAC Manual, section 9.9.1 (2004); and
 25. United States: Child Soldiers Accountability Act, section 2442(a)(1) (2008).
- 2 The term 'conscripts' is used in the Rome Statute, arts. 8(2)(b)(xxvi) and 8(2)(e)(vii). Also note that ILO 182, art. 3(a), makes reference to 'forced or compulsory recruitment' and the Optional Protocol uses the term "compulsory recruitment" in art. 2.

The term 'conscripts' may be found in the following national laws and military manuals:

1. Australia: Criminal Code Act, sections 268.68(2) and 268.88(2) (taking into account amendments up to Act No. 80 of 2011);
 2. Canada: Crimes Against Humanity and War Crimes Act, section 3(4) refers to crimes described in art. 8(2) of the Rome Statute ("conscript and enlistment into armed forces or groups") (2000);
 3. Colombia: Law on Childhood and Adolescence No. 1098, prohibits the use and recruitment of children by armed groups, and also prohibits any act violative of ILO Convention No. 182 ("forced compulsory recruitment for use in armed conflict") (2006);
 4. Fiji: Employment Relations Promulgation, section 91(a) ("forced or compulsory recruitment") (2007);
 5. Finland: Criminal Code, chapter 11, section 5(2) refers to war crimes under art. 8 of the Rome Statute ("conscript and enlistment into armed forces or groups") (39/1889, amendments up to 940/2008 included);
 6. Germany: Law Introducing the International Crimes Code, art. 1, section 8(1)(5) (2002);
 7. Greece: Penal Code ("recruitment by force or threats");
 8. Lithuania: Criminal Code, art. 105 (last amended in 2008);
 9. Mali: Penal Code, art. 31(i)(26) (2001);
 10. Netherlands: International Crimes Act, sections 5(5)(r) and 6(3)(f) (2003);
 11. New Zealand: International Crimes and International Criminal Court Act, art. 11(2)(b) and (d) refers to crimes under art. 8(2)(b) and 8(2)(e) of the Rome Statute ("conscript and enlistment into armed forces or groups") (2000);
 12. Philippines: Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24) (2009); Republic Act No. 9231, An Act Providing for the Elimination of the Worst Forms of Child Labour, section 12(d)(1) (2003);
 13. Republic of Korea: ICC Act, art. 19(3)(5) (2007);
 14. Slovenia: Penal Code, art. 378 (2007);
 15. South Africa: ICC Act, schedule 1, part 3, sections (b)(xxvi) and (e)(vii) (2002);
 16. United Kingdom: The International Criminal Court Act, schedule 8, sections 8(2)(b)(xxvi) and 8(2)(e)(vii) (2001); LOAC Manual section 9.9.1 (2004); and
 17. United States: Child Soldiers Accountability Act, section 2442 (a)(1) (2008).
- 3 The term 'enlists' is used in the Rome Statute, arts. 8(2)(b)(xxvi) and 8(2)(e)(vii). The term may also be found in the following national laws and military manuals:
1. Australia: Criminal Code Act, sections 268.68(3) and 268.88(3) (taking into account amendments up to Act No. 80 of 2011);
 2. Canada: Crimes Against Humanity and War Crimes Act, section 3(4) refers to crimes described in art. 8(2) of the Rome Statute ("conscript and enlistment into armed forces or groups") (2000);
 3. Germany: Law Introducing the International Crimes Code, art. 1, section 8(1)(5) (2002);
 4. Jordan: Military Service Law No. 2, chapter 2, art. 5 (1972);
 5. Lithuania: Criminal Code, section 105 (last amended in 2008);
 6. Mali: Penal Code, art. 31(i)(26) (2001);
 7. Netherlands: International Crimes Act, sections 5(5)(r) and 6(3)(f) (2003);
 8. New Zealand: International Crimes and International Criminal Court Act, art. 11(2)(b) and (d) refers to crimes under art. 8(2)(b) and 8(2)(e) of the Rome Statute ("conscript and enlistment into armed forces or groups") (2000);
 9. Nicaragua: Penal Code, art. 509 (2008);
 10. Philippines: Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24) (2009);
 11. South Africa: ICC Act, schedule 1, part 3, sections (b)(xxvi) and (e)(vii) (2002);
 12. Switzerland: Criminal Code, section 264(f) (2012);
 13. United Kingdom: The International Criminal Court Act, schedule 8, sections 8(2)(b)(xxvi) and 8(2)(e)(vii) (2001); LOAC Manual, section 9.9.1 (2004); and
 14. United States: Child Soldiers Accountability Act, section 2442(a)(1) (2008).
- 4 Although Option 1 broadly prohibits all recruitment and participation in hostilities of persons under the age of 18, the standard 'under the age of 18' is used in relation to protecting such persons from direct participation in hostilities and compulsory recruitment by States or use by armed groups and can be found in the Optional Protocol, arts. 1, 2 and 4(1), respectively, as well as in ILO 182, art. 2, in the context of prohibiting the forced or compulsory recruitment of children for use in armed conflict.

This standard is also used by the following States in their national legislation and military manuals:

1. Australia: Criminal Code Act, sections 268.68 (4 – 6) and 268.88 (4 – 6) (refers to participation in hostilities, conscription and enlistment other than as members of national armed forces) (taking into account amendments up to Act No. 80 of 2011); The Manual of the Law of Armed Conflict, section 9.50 (2006);

2. Colombia: Penal Code (Law No. 599 of 2000), section 162 (2000); Law on Judicial Cooperation art. 13 – 14 (1997);
 3. Denmark: Military Criminal Code, section 36(2) (2005);
 4. Ethiopia: Criminal Code, section 270(m) (2004); Defence Force Proclamation No. 27/1996, section 4(3) (1996);
 5. Fiji: Employment Relations Promulgation, section 91(a) (2007);
 6. Finland: Criminal Code, chapter 11, section 5(5) (as amended up to 940/ 2008);
 7. Lithuania: Criminal Code, section 105(2) (last amended in 2008);
 8. Malaysia: Armed Forces Act, section 18 (1972);
 9. Nicaragua: Penal Code, art. 509 (2008);
 10. Nigeria: Child Rights Act, sections 277 and 34(1) (2003);
 11. Philippines: Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24) ("conscripting, enlisting or recruiting children under 18 years into armed groups or using children under 18 to participate actively in hostilities") (2009); Republic Act No. 9231, An Act Providing for the Elimination of the Worst Forms of Child Labour, section 12(d) (1) (2003); Army Soldiers Handbook on Human Rights and IHL at p. 67 (2006);
 12. Qatar: Law on Military Service, art. 13 (2006);
 13. Rwanda: Law Relating to Rights and Protection of the Child against Violence, art. 19 (2001); Presidential Order Establishing Army General Statutes, art. 5 (2002); Law Repressing the Crime of Genocide, Crimes against Humanity and War Crimes, arts. 10 – 11 (2003);
 14. Slovenia: Penal Code, art. 378 (2007);
 15. Sri Lanka: Penal Code, section 358A (2006);
 16. Uganda: Defence Forces Act, section 52(2) (2005); and
 17. Ukraine: Military Service Law, art. 15 (1992).
- 5 The term 'armed forces' is used in AP I, art. 77(2), AP II, art. 4(3) (c), the Rome Statute, arts. 8(2)(b)(xxvi) and 8(2)(e)(vii), and the Optional Protocol art. 2. Rule 136 of the ICRC Customary IHL Study provides that children must not be recruited into armed forces. Rule 136 does not define 'children'; however, its Commentary does recognize that although there is "not, as yet, a uniform practice with respect to the minimum age for recruitment, there is agreement that it should not be below 15 years of age." Rule 156 of the ICRC Customary IHL Study provides that serious violations of international humanitarian law constitute war crimes and lists in the commentary to that Rule both "conscripting or enlisting children under the age of 15 into armed forces or groups, or using them to participate in hostilities."

This term is also referred to in the following national laws and military manuals:

1. Azerbaijan: Criminal Code, art. 116.0.5 (1999);
 2. Australia: Criminal Code Act, sections 268.68 (1 – 3) and 268.88 (1 – 3) (taking into account amendments up to Act No. 80 of 2011);
 3. Belgium: Criminal Code, art. 136 (*quater*, para 1, point 7) (amended in 2003);
 4. Cameroon: Instructor's Manual, section 351.5 at p. 90 (2006);
 5. Canada: Crimes Against Humanity and War Crimes Act, section 3(4) refers to crimes described in art. 8(2) of the Rome Statute ("conscripting and enlistment into armed forces or groups") (2000);
 6. Colombia: Penal Code (Law No. 599 of 2000), section 162 (2000);
 7. Congo: Genocide, War Crimes and Crimes against Humanity Act, art. 4 (1998);
 8. Denmark: Military Criminal Code, section 36(2) (2005);
 9. Ethiopia: Criminal Code, section 270(m) (uses the term "defence forces") (2004);
 10. Finland: Criminal Code, chapter 11, section 5(5) ("military forces") (as amended up to 940/ 2008);
 11. Germany: Law Introducing the International Crimes Code, art. 1, section 8(1)(5) (2002);
 12. Ireland: Geneva Conventions Act, section 4(1) and (4) (as amended in 1998);
 13. Lithuania: Criminal Code, section 105(1) (last amended in 2008);
 14. Malaysia: Armed Forces Act, section 18 (1972);
 15. Mali: Penal Code, art. 31(i)(26) (2001);
 16. Netherlands: International Crimes Act, sections 5(5)(r) and 6(3)(f) (2003);
 17. Nicaragua: Penal Code, art. 509 (2008);
 18. New Zealand: International Crimes and International Criminal Court Act, art. 11(2)(b) and (d), refers to crimes under art. 8(2)(b) and 8(2)(e) of the Rome Statute ("conscripting and enlistment into armed forces or groups") (2000);
 19. Norway: Military Penal Code, section 108 (as amended in 1981);
 20. Philippines: Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24) (2009); Republic Act No. 7610, An Act on Special Protection of Children Against Abuse, Exploitation and Discrimination, art. X, section 22(b) (1992);
 21. Republic of Korea: ICC Act, art. 19(3)(5) (2007);
 22. Russian Federation: Regulation on the Application of IHL, section 81 (2001);
 23. Slovenia: Penal Code, art. 378 (2007);
 24. Spain: Penal Code, art. 612(3) (1995);
 25. South Africa: ICC Act, schedule 1, part 3, sections (b)(xxvi) and (e)(vii) (2002);
 26. Switzerland: Criminal Code, section 264(f) (2012);
 27. Ukraine: Military Service Law, art. 15 (1992);
 28. United Kingdom: The International Criminal Court Act, schedule 8, sections 8(2)(b)(xxvi) and 8(2)(e)(vii) (2001); LOAC Manual, section 9.9.1 (2004); and
 29. United States: Child Soldiers Accountability Act, section 2442(a)(1) (2008).
- 6 The term 'armed groups' is used in AP II, art. 4(3)(c), the Rome Statute, arts. 8(2)(b)(xxvi) and 8(2)(e)(vii) and the Optional Protocol, art. 4(1). Rule 136 of the ICRC Customary IHL Study provides that children must not be recruited into armed forces or armed groups. Rule 156 of the ICRC Customary IHL Study provides that serious violations of international humanitarian law constitute war crimes and lists in the commentary to that Rule both "conscripting or enlisting children under the age of 15 into armed forces or groups, or using them to participate in hostilities." Also note that AP I art. 77(2) binds the "parties to the conflict", which by implication covers armed groups.

The term 'armed groups' is referred to in the following national laws and military manuals:

1. Australia: Criminal Code Act, sections 268.68 (4 – 6) and 268.88 (4 – 6) ("other than as members of national armed forces") (taking into account amendments up to Act No. 80 of 2011);
2. Belgium: Criminal Code, art. 136 (*quater*, para 1, point 7) (amended in 2003);
3. Cameroon: Instructor's Manual, at p. 29 ("parties to the conflict") (2006);
4. Canada: Crimes Against Humanity and War Crimes Act, section 3(4) refers to crimes described in art. 8(2) of the Rome Statute ("conscripting and enlistment into armed forces or groups") (2000);
5. Colombia: Penal Code (Law No. 599 of 2000), section 162 (2000);
6. Congo: Genocide, War Crimes and Crimes against Humanity Act, art. 4, refers to crimes described in art. 8(2) of the Rome Statute ("conscripting and enlistment into armed forces or groups") (1998);
7. Denmark: Military Criminal Code, section 36(2) (2005);
8. Finland: Criminal Code, chapter 11, section 5(5) ("military groups") and section 5(2), refers to crimes defined under art. 8(2) of the Rome Statute and therefore includes armed groups (amendments up to 940/ 2008);
9. Germany: Law Introducing the International Crimes Code, art. 1, section 8(1)(5) (2002);
10. Ireland: Geneva Conventions Act, section 4(1) and (4) (1962);
11. Lithuania: Criminal Code, section 105(2) ("military groups not belonging to the armed forces of the State") (last amended in 2008);
12. Mali: Penal Code, art. 31(i)(26) (2001);
13. Netherlands: International Crimes Act, section 5(5)(r) and 6(3)(f) (2003);
14. New Zealand: International Crimes and International Criminal Court Act, art. 11(2)(b) and (d) refers to crimes under arts. 8(2)(b) and 8(2)(e) of the Rome Statute ("conscripting and enlistment into armed forces or groups") (2000);
15. Norway: Military Penal Code, section 108 ("contravention of the protection of persons as laid out in ... the two additional protocols to the Geneva Conventions ...") (as amended in 1981);

16. Philippines: Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24)(ii) (2009); Republic Act No. 7610, An Act on Special Protection of Children Against Abuse, Exploitation and Discrimination, art. X, section 22(b) (1992);
 17. Republic of Korea: ICC Act, art. 10(3)(5) (2007);
 18. Russian Federation: Regulation on the Application of IHL, section 81 (2001);
 19. Slovenia: Penal Code, art. 378 ("national or other armed forces") (2007);
 20. South Africa: ICC Act, schedule 1, part 3, sections (b)(xxvi) and (e)(vii) (2002);
 21. Switzerland: Criminal Code, section 264(f) (2012);
 22. United Kingdom: The International Criminal Court Act, schedule 8, sections 8(2)(b)(xxvi) and 8(2)(e)(vii) (2001); LOAC Manual, section 9.9.1 (2004); and
 23. United States: Child Soldiers Accountability Act, section 2442(a)(1) (2008).
- 7 The term 'use in hostilities' can be found with the following variations in: AP I, art. 77(2) "do not take a direct part in hostilities", AP II, art. 4(3)(c) "allowed to take part in hostilities", the Rome Statute, arts. 8 (2)(b)(xxvi) and 8(2)(e)(vii) "using them to participate actively in hostilities" and the Optional Protocol, art. 1 "do not take a direct part in hostilities" as well as art. 4(1), "use in hostilities". Rule 137 of the ICRC Customary IHL Study provides that children must not be allowed to take part in hostilities. Rule 156 of the ICRC Customary IHL Study provides that serious violations of international humanitarian law constitute war crimes and lists in the commentary to that Rule both "conscripting or enlisting children under the age of 15 into armed forces or groups, or using them to participate in hostilities."

The term 'use in hostilities' can be found in the following national laws and military manuals:

1. Argentina: (Law of War Manual) Leyes de Guerra, PC-08-01, Público, Edición 1989 ("participate directly in hostilities") (1989);
2. Australia: Criminal Code Act, section 268.68(1)(a) ("participate actively in hostilities") (taking into account amendments up to Act No. 80 of 2011); LOAC Manual, section 9.50 ("direct part in hostilities") (2006);
3. Azerbaijan: Law on the Rights of the Child, art. 37 ("direct participation in military operations") (1998);
4. Belarus: Law on the Rights of the Child, art. 29 ("participate in hostilities") (1993); Criminal Code, art. 136(5) ("take part in hostilities") (1999);
5. Belgium: Criminal Code, art. 136 (*quater*, para 1, point 7) ("actively involving children in hostilities") (amended in 2003);
6. Canada: Crimes Against Humanity and War Crimes Act, section 3(4), refers to crimes described in art. 8(2) of the Rome Statute ("using them to participate actively in hostilities") (2000);
7. Cameroon: Instructor's Manual, section 131 ("direct participation in hostilities") (2006);
8. Canada: National Defence Act, section 34 ("may not be deployed to a theatre of hostilities") (1985);
9. Colombia: Penal Code (Law No. 599 of 2000), section 162 ("participate directly or indirectly in hostilities") (2000); Law on Judicial Cooperation arts. 13 – 14 ("participate in actual military activities") (1997); Basic Military Manual, at p. 75 ("direct participation in hostilities") (1995);
10. Finland: Criminal Code, chapter 11, section 5(5) ("used in hostilities") (amendments up to 940/2008);
11. France: LOAC Manual, at p. 40 ("participate in hostilities") (2001);
12. Lithuania: Criminal Code, section 105 (1 – 2) ("uses them in a military operation") (last amended in 2008);
13. Germany: Military Manual, section 306 (1992) ("do not take a direct part in hostilities");
14. Georgia: Criminal Code, art. 413(d) ("participate actively in hostilities") (1999);
15. Kenya: The Children Act, sections 10(2) and 29 ("take part in hostilities") (No. 8 of 2001);
16. Netherlands: International Crimes Act, sections 5(5)(r) and 6(3)(f) ("using them to participate actively in hostilities") (2003);
17. Nicaragua: Penal Code, art. 509 ("participate actively in hostilities") (2008);
18. New Zealand: International Crimes and International Criminal Court Act, art. 11(2)(b) and (d) refers to crimes under arts. 8(2)(b) and 8(2)(e) of the Rome Statute ("using them to participate actively in hostilities") (2000);
19. Philippines: Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24)(iii) ("participate actively in hostilities") (2009);
20. Russian Federation: Regulation on the Application of IHL, section 81 ("nor allowed to take part in hostilities") (2001); Criminal Code, art. 359(2) ("... for use in armed conflict or hostilities") (taking into account amendments as of 2004);
21. Rwanda: Law Repressing the Crime of Genocide, Crimes against Humanity and War Crimes, arts. 10 – 11 ("take part in hostilities") (2003);
22. Slovenia: Penal Code, art. 378 ("participation in hostilities") (2007);
23. Sri Lanka: Penal Code, section 358A ("use in armed conflict") (2006);
24. Ukraine: IHL Manual, section 52(2) ("not be allowed to take part in hostilities") (2004);
25. United Kingdom: The International Criminal Court Act, schedule 8, sections 8(2)(b)(xxvi) and 8(2)(e)(vii) ("use to participate actively in hostilities") (2001); LOAC Manual, section 9.9.1 ("participate actively in hostilities") (2004); and
26. United States: Child Soldiers Accountability Act, section 2442(a)(2) ("uses a person under 15 to participate actively in hostilities") (2008).

In treaty law and national legislation the term 'use in hostilities' is more commonly used than the term 'use in armed conflict'. The term 'use to participate actively in hostilities' has also been defined in two recent judgments.

In *Prosecutor v. Thomas Lubanga Dyilo*, the accused was charged with "enlisting and conscripting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of articles 8(2)(b)(xxvi) and 25(iii)(a) of the Rome Statute from early September 2002 to 2 June 2003." Additionally, the accused was charged with "enlisting and conscripting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of articles 8(2)(e)(vii) of the Rome Statute from 2 June to 13 August 2003." The term 'use to participate actively in hostilities' was defined by the Trial Chamber to include "a wide range of activities from those children on the front line through to the boys and girls who are involved in a myriad roles that support the combatants." The Trial Chamber ruled that "the decisive factor in determining if an 'indirect' role is to be treated as active participation in hostilities is whether the support provided by the child to the combatants exposed him or her to real danger as a potential target." The Trial Chamber added that "these combined factors – the child's support and this level of consequential risk – mean that although absent from the immediate scene of the hostilities, the individual was nonetheless actively involved in them." The Trial Chamber further added that "given the different types of roles that may be performed by children used by armed groups, the Chamber's determination of whether a particular activity constitutes 'active participation' can only be made on a case-by-case basis." (ICC Trial Chamber I, Situation in the Democratic Republic of the Congo, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment Pursuant to Article 74 of the Statute, ICC-01/04-01/06, 14 March 2012).

In *Prosecutor v. Charles Ghankay Taylor*, the accused was charged with "conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities (Count 9)." The Trial Chamber of the Special Court for Sierra Leone defined 'using children to participate actively in hostilities' "encompasses putting their lives directly at risk in combat, but may also include participation in activities linked to combat such as carrying loads for the fighting faction, finding and/or acquiring food, ammunition or equipment, acting as decoys, carrying messages, making trails or finding routes, manning checkpoints or acting as human shields." The Trial Chamber further added "whether a child is actively participating in hostilities in such situations will be assessed on a case-by-case basis." The Trial Chamber held that "in the context of food-finding missions in which children carried arms and/or committed crimes against civilians, such activities constitute active participation in hostilities." The Trial Chamber also held that the elements of crime of using persons below 15 years to actively participate in hostilities were proved beyond reasonable doubt in relation to the use of children to guard diamond mines, as body guards, to amputate limbs and to decapitate people (Special Court for Sierra Leone Trial Chamber II, *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-01-T, Judgment, 18 May 2012).

Certain treaties refer to 'use in armed conflict', such as ILO 182, which in art. 3(a) prohibits 'forced or compulsory recruitment of children for use in armed conflict'. Both AP I and AP II apply respectively to the 'parties to the conflict' and to 'armed forces or groups' and the Rome Statute in arts. 8(2)(b) and 8(2)(e) makes reference to international/non-international armed conflict, respectively.

The following national laws use the term 'use in armed conflict':

1. Ethiopia: Criminal Code, section 270(m) ("take part in armed conflict") (2004);
2. Kenya: The Children Act, sections 10(2) and 29 ("recruited in armed conflicts") (No. 8 of 2001);
3. Montenegro: Criminal Code, section 444(1) ("use in armed conflicts") (Official Gazette of the Republic of Montenegro No. 70/2003, and Correction, No. 13/2004);
4. Sri Lanka: Penal Code, section 358A ("use in armed conflict") (2006);
5. Switzerland: Criminal Code, section 264(f) ("using them to participate in armed conflict") (2012);

6. Russian Federation: Criminal Code, art. 359(2) ("...for use in armed conflict or hostilities") (taking into account amendments as of 2004);
 7. Both the Australian Criminal Code sections 268.68 and 268.88 (taking into account amendments up to Act No. 80 of 2011) and the United Kingdom International Criminal Court Act, schedule 8, sections 8(2)(b)(xxvi) and 8(2)(e)(vii) (2001) make reference to armed conflict.
- 8 In incorporating these model legislative provisions into national legislation drafters need to bear in mind that the Rome Statute in art. 25 provides for criminal responsibility for individual and joint commission as well as for ordering, soliciting or inducing and aiding, abetting or otherwise assisting in the commission of war crimes. Furthermore, art. 28 of the Rome Statute provides for the responsibility of commanders and other superiors in the commission of crimes. See, for example, the United States' Child Soldiers Accountability Act (2008) on page 36 of this document. Both articles 25 and 28 of the Rome Statute deal only with crimes within the jurisdiction of the ICC, i.e. in this case a breach of arts. 8(2)(b)(xxvi) and 8(2)(e)(vii) and not, for example, the crime of recruiting children between 15 and 18 years of age.
- 9 The following treaties use the term 'forced or compulsory recruitment': ILO 182, art. 3(a), and Optional Protocol, art. 2, prohibit 'compulsory recruitment into armed forces'. Rule 136 of the ICRC Customary IHL Study provides that children must not be recruited into armed forces or armed groups.
- Note: The **Rome Statute**, arts. 8(2)(b)(xxvi) and 8(2)(e)(vii) uses the term 'conscripting' which is congruent with compulsory recruitment, and both AP I, art. 77(2) and AP II, art. 4(3) use the term 'recruitment', which covers both voluntary and compulsory recruitment; however, these treaties apply only to children under 15 years of age.
- 10 The standard 'under the age of 18' is used in the Optional Protocol, arts. 1, 2 and 4, and in ILO 182, art. 2. Please refer to supra note 4 for States that use this standard in their national legislation and military manuals.
- 11 ILO 182, art. 7(1) requires penal sanctions for forced or compulsory recruitment of persons under 18 for use in armed conflict, which by implication covers such recruitment by armed forces. Note: The Rome Statute, art. 8(2)(b)(xxvi) and 8(2)(e)(vii), criminalizes conscription into the armed forces for children under 15. Rule 156 of the ICRC Customary IHL Study provides that serious violations of international humanitarian law constitute war crimes and lists in the commentary to that Rule both "conscripting or enlisting children under the age of 15 into armed forces or groups, or using them to participate in hostilities."

The following States provide criminal sanctions for forced or compulsory recruitment for children under 18:

1. Colombia: Penal Code (Law No. 599 of 2000), art. 162 ("recruits into armed forces", which by implication covers both voluntary and compulsory recruitment) and Law on Childhood and Adolescence No. 1098 art. 20(7) ("prohibits forced and compulsory recruitment of children under 18") (2006);
2. Denmark: Military Criminal Code, section 36(2) (2005) ("Any person who deliberately uses war means or procedures the application of which violates an international agreement entered into by Denmark or international customary law, shall be liable to the same penalty [i.e. imprisonment up to life imprisonment]");
3. Fiji: Employment Relations Promulgation, section 91(a) ("prohibits forced or compulsory recruitment") (2007);
4. Greece: Penal Code, art. 323(a) ("recruitment by force, threats...");
5. Indonesia: Law No. 23, art. 87 (2002);
6. Ireland: Geneva Conventions Act, sections 4(1) and (4) ("conscripting") (as amended in 1998);
7. Kyrgyz Republic: Criminal Code, art. 124 ("force");
8. Lithuania: Criminal Code, art. 105(2) ("conscripting into armed forces") (last amended in 2008);
9. Mali: Penal Code, art. 3(i)(26) ("conscripting") (2001);
10. Montenegro: Criminal Code, section 444(1) ("any person who by force/threat or deceit recruits...") (Official Gazette of the Republic of Montenegro, No. 70/2003, and Correction, No. 13/2004);
11. Philippines: Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24)(iii) ("conscripting") (2009); Republic Act No. 9231, An Act Providing for the Elimination of the Worst Forms of Child Labour, section 12(d)(1) ("forced or compulsory recruitment of children") (2003);
12. Rwanda: Law Repressing the Crime of Genocide, Crimes against Humanity and War Crimes, arts. 10 – 11 ("forcing children under the age of 18...") (2003);
13. Slovenia: Penal Code, art. 378 ("conscripting") (2007);
14. Spain: Penal Code, art. 612(3) (1995); and
15. Sri Lanka: Penal Code, section 358A ("recruits for use in armed conflict", which by implication covers forced or compulsory recruitment) (2006).

The following States provide criminal sanctions for forced or compulsory recruitment of children under 15 into the armed forces:

1. Australia: Criminal Code Act, sections 268.68(2) and 268.88(2) ("conscripting into national armed forces") (taking into account amendments up to Act No. 80 of 2011);
2. Belgium: Criminal Code, art. 136 (*quater*, para. 1, point 7) ("recruitment of children under the age of 15 is a war crime") amended in 2003;
3. Canada: Crimes Against Humanity and War Crimes Act, section 3(4) refers to crimes described in art. 8(2) of the Rome Statute ("conscripting into armed forces") (2000);
4. Congo: Genocide, War Crimes and Crimes against Humanity Act, art. 4 (1998);
5. Finland: Criminal Code, chapter 11, section 5(2) refers to crimes under art. 8 of the Rome Statute ("conscripts into armed forces");
6. France: LOAC Manual, at p. 40 ("prohibited to recruit persons under 15 into the armed forces") (2001). The manual considers such recruitment "a war crime";
7. Georgia: Criminal Code, art. 413(d) (1999);
8. Germany: Law Introducing the International Crimes Code, art. 1, section 8(1)(5) (2002);
9. Ireland: Geneva Conventions Act, section 4(1) and (4) (as amended in 1998);
10. Netherlands: International Crimes Act, section 5(5)(r) and 6(3)(f) ("conscripting into armed forces") (2003);
11. New Zealand: International Crimes and International Criminal Court Act, art. 11(2)(b) and (d), refers to crimes under arts. 8(2)(b) and 8(2)(e) of the Rome Statute ("conscripting into armed forces") (2000);
12. Norway: Military Penal Code, section 108 (as amended in 1981);
13. Republic of Korea: ICC Act, art. 10(3)(5) (2007);
14. South Africa: ICC Act, schedule 1, part 3, sections (b)(xxvi) and (e)(vii) (2002);
15. Switzerland: Criminal Code, art. 263(f) ("recruits into armed forces") (as of January 2012);
16. United Kingdom: The International Criminal Court Act, schedule 8, sections 8(2)(b)(xxvi) and 8(2)(e)(vii) ("conscripting") (2001);
17. United States: Child Soldiers Accountability Act, section 2442(a)(2) ("conscripting") (2008).

- 12 The following are examples of States prohibiting recruitment of children under 15 into the armed forces:

1. Argentina: Law of War Manual, section 4.12 (1989);
2. Australia: Criminal Code Act, sections 268.68 (1 – 3) and 268.88 (1 – 3) (taking into account amendments up to Act No. 80 of 2011);
3. Belgium: Criminal Code, art. 136 (*quater*, para. 1, point 7) ("recruitment of children under the age of 15 is a war crime") (amended in 2003);
4. Cameroon: Instructor's Manual, at p. 90, section 351(5) (2006);
5. Canada: LOAC Manual, section 22 (1999); Crimes against Humanity and War Crimes Act, section 3(4) (2000);
6. Colombia: Basic Military Manual, at p. 75 (1995);
7. France: LOAC Manual, at p. 40 (2001);
8. Germany: Military Manual, section 306 (1992);
9. Ireland: Geneva Conventions Act, sections 4(1) and (4) (as amended in 1962);
10. Kenya: LOAC Manual, at p. 8 (1997);
11. Mali: Penal Code, art. 31(i)(26) (2001);
12. Netherlands: Military Manual, section 1061 (2005); International Crimes Act, sections 5(5) and 6(3) (2003);
13. New Zealand: Military Manual, section 1813 (1992); International Crimes and International Criminal Court Act, art. 11(2)(b) and (d) (2000);
14. Nigeria: Military Manual, at p. 38, section 4(1994);
15. Norway: Military Penal Code, section 108 (as amended in 1981);
16. Philippines: Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24)(i) (2009);
17. Republic of Korea: ICC Act, art. 10(3)(5) (2007);

18. Russian Federation: Regulations on the Application of IHL, section 81 (2001);
 19. Spain: LOAC Manual, vol. I, section 1.3(c)(1) (1996); Penal Code art. 612(3) (1995);
 20. Switzerland: Criminal Code, section 264(f) (2012);
 21. United Kingdom: LOAC Manual, section 9.9.1 (2004); International Criminal Court Act, art. 50(1) and schedule 8, sections 8(2)(b)(xxvi) and 8(2)(e)(vii) (2001); and
 22. United States: Child Soldiers Accountability Act, section 2442(a)(1) (2008).
- 13 The Rome Statute criminalizes conscripting or enlisting children under 15 into national armed forces in arts. 8(2)(b)(xxvi) and 8(2)(e)(vii). Also, ILO 182, art. 7(1), requires criminal penalties for forced or compulsory recruitment of children under 18.

See supra note 12 for States that provide criminal sanctions for forced or compulsory recruitment of children under 15 into the armed forces.

- 14 The Optional Protocol, art. 4(2), requires States to "prohibit and criminalize" recruitment and use in hostilities of persons under 18 by armed groups. Rule 137 of the ICRC Customary IHL Study provides that children must not be allowed to take part in hostilities. Rule 156 of the ICRC Customary IHL Study provides that serious violations of international humanitarian law constitute war crimes and lists in the commentary to that Rule both "conscripting or enlisting children under the age of 15 into armed forces or groups, or using them to participate in hostilities." Note: even though the Rome Statute only covers children under 15, arts. 8(2)(b)(xxvi) and 8(2)(e)(vii) criminalize the "use of children to actively participate in hostilities" by armed groups.

The following States criminalize recruitment or use in hostilities of children under 18 by armed groups:

1. Australia: Criminal Code Act, sections 268.68 (4 – 6) and 268.88 (4 – 6) (taking into account amendments up to Act No. 80 of 2011);
2. Colombia: Penal Code (Law No. 599 of 2000), art. 162 ("recruits or forces to participate directly or indirectly in hostilities. Applicable to armed groups.");
3. Denmark: Military Penal Code, section 36(2) (2005); ("(2) Anybody who deliberately uses war methods or procedures contrary to an international agreement signed by Denmark or international customary law shall be punished similarly");
4. Finland: Criminal Code, chapter 11, section 5(1)(5) ("recruits into military groups or uses in hostilities") (amendments up to 940/2008);
5. Lithuania: Criminal Code, art. 105(2) ("conscripts or recruits into military groups not belonging to the armed forces of the State") (last amended in 2008);
6. Nicaragua: Penal Code, art. 509 (2008);
7. Philippines: Army Soldiers Handbook, at p. 55, section 4 (2006); Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24)(ii) (2009);
8. Rwanda: Law Repressing the Crime of Genocide, Crimes against Humanity and War Crimes, arts. 10 – 11 (2003);
9. Slovenia: Penal Code, art. 378 ("national or other armed forces") (2007);
10. Spain: Penal Code, art. 612(3) (1995); and
11. Sri Lanka: Penal Code, section 358A (2006).

The following States criminalize recruitment or use in hostilities of children under 15 by armed groups:

1. Belgium: Criminal Code, art. 136 (*quater*, para. 1, point 7) (amended in 2003);
 2. Canada: Crimes Against Humanity and War Crimes Act, section 3(4) refers to crimes described in art. 8(2) of the Rome Statute ("conscripting and enlistment into armed forces or groups") (2000);
 3. Congo: Genocide, War Crimes and Crimes against Humanity Act, art. 4 (1998) defines war crimes with reference to the categories of crimes defined in art. 8 of the Rome Statute;
 4. Germany: Law Introducing the International Crimes Code, art. 1, section 8(1)(5) (2002);
 5. Ireland: Geneva Conventions Act, section 4(1) and (4) (as amended in 1998);
 6. Mali: Penal Code, art. 31(i)(26) (2001);
 7. Netherlands: International Crimes Act, sections 5(5)(r) and 6(3)(f) (2003);
 8. New Zealand: International Crimes and International Criminal Court Act, art. 11(2)(b) and (d) refers to crimes under arts. 8(2)(b) and 8(2)(e) of the Rome Statute ("conscripting and enlistment into armed forces or groups") (2000);
 9. Norway: Military Penal Code, section 108 (as amended in 1981);
 10. Republic of Korea: ICC Act, art. 10(3)(5) (2007);
 11. South Africa: ICC Act, schedule 1, part 3, sections (b)(xxvi) and (e)(vii) (2002);
 12. Switzerland: Criminal Code, section 264(f) (2012);
 13. United Kingdom: International Criminal Court Act, art. 50(1) (2001); and
 14. United States: Child Soldiers Accountability Act, section 2442 (a)(1) (2008).
- 15 Of the 47 States surveyed 12 States provide for imprisonment as a penalty (Australia, Denmark, Ethiopia, Finland, Kyrgyzstan, Lithuania, Nicaragua, New Zealand, Norway, Rwanda, Slovenia and Switzerland); five States provide for a fine in addition to imprisonment (Colombia, Indonesia, Kenya, Philippines (Republic Act No. 9851) and Sri Lanka (Penal Code)); six States provide for imprisonment or a fine or both (Fiji, Indonesia, Kenya, Philippines (Republic Act No. 9231), Sri Lanka (Employment of Women, Young Persons and Children Act) and the United States); and the Netherlands provides for a fine as an alternative to imprisonment.
- 16 The prohibition against children directly participating in hostilities can be found in the Optional Protocol, art. 1. However, States may also wish to consider the higher standard set by Rule 137 of the ICRC Customary IHL Study, which provides that children must not be allowed to take part in hostilities. Additionally, Rule 156 of the ICRC Customary IHL Study provides that serious violations of international humanitarian law constitute war crimes and lists in the commentary to that Rule both "conscripting or enlisting children under the age of 15 into armed forces or groups, or using them to participate in hostilities." ILO 182, art. 3(a) prohibits forced or compulsory recruitment for use in armed conflict covering all persons under the age of 18. The Rome Statute, arts. 8(2)(b)(xxvi) and 8(2)(e)(vii), also prohibits active participation in hostilities for children under 15.

Of the 28 States surveyed below, 17 use the term 'direct or active participation in hostilities' (Argentina, Australia, Azerbaijan, Cameroon, Congo, Colombia, Finland, France, Germany, Georgia, Netherlands, Nicaragua, New Zealand, Philippines, Slovenia, United Kingdom and the United States) while seven use the term 'participation in hostilities' (Belarus, Canada, Lithuania, Russian Federation, Rwanda, Switzerland and Ukraine).

The prohibition against children directly participating in hostilities can also be found in the following national laws and regulations:

1. Argentina: (Law of War Manual) Leyes de Guerra, PC-08-01, Público, Edición 1989 ("the belligerent parties shall take all measures to ensure that children under the age of 15 do not participate directly in hostilities") (1989);
2. Australia: LOAC Manual, section 9.50 ("children under 18 years of age should not take a direct part in hostilities" (2006)); Criminal Code Act, sections 268.68 (1 and 4) and 268.88 (1 and 4) ("participate actively in hostilities") (taking into account amendments up to Act No. 80 of 2011);
3. Azerbaijan: Law on the Rights of the Child, art. 37 ("direct participation in military operations") (1998);
4. Belarus: Law on the Rights of the Child, art. 29 ("make children participate in hostilities"), 1993; Criminal Code, art. 136(5) ("direct participation in hostilities") (1999);
5. Cameroon: Instructor's Manual, at p. 29, section 131 ("not to engage children under fifteen in direct participation in hostilities") (2006);
6. Canada: National Defence Act, section 34 (1985); LOAC Manual, section 1714(1)(c) (2001) states in its chapter on non-international armed conflicts: ("a ban on their enlistment or participation in the hostilities while under the age of fifteen"); Crimes against Humanity and War Crimes Act, section 3(4) ("crimes described in art. 8, para. 2, of the Rome Statute are crimes according to customary international law", i.e. active participation of children in hostilities) (2000);
7. Congo: Genocide, War Crimes and Crimes against Humanity Act, art. 4 ("defines war crimes with reference to the categories of crimes defined in art. 8 of the 1998 ICC Statute i.e. active participation of children in hostilities") (1998);
8. Colombia: Law on Judicial Cooperation, art. 13 – 14 (1997); the Basic Military Manual provides, with respect to non-international armed conflicts in particular, that it is prohibited to "recruit and allow direct participation in hostilities of children under the age of 15" (1995);
9. Denmark: Military Criminal Code, section 36(2) (2005);
10. Finland: Criminal Code, chapter 11, section 5(2) ("commits a crime defined under Article 8 of the Rome Statute of the ICC i.e. active participation of children in hostilities");
11. France: LOAC Manual, at p. 40 ("to make children under the age of 15 participate directly in hostilities is a war crime") (2001);
12. Germany: Military Manual, section 306 ("children who have not attained the age of fifteen years do not take direct part in hostilities") (1992);

13. Georgia: Criminal Code, art. 413(d) ("participate actively in hostilities") (1999);
14. Ireland: Geneva Conventions Act, section 4(1) and (4) (as amended in 1998);
15. Lithuania: Criminal Code, art. 105(1) and (2) ("uses children in a military operation") (last amended in 2008);
16. Netherlands: Military Manual, section 0309 ("children under the age of 15 play no direct part in hostilities") (2005); International Crimes Act, sections 5(5) and 6(3) ("using children to actively participate in hostilities") (2003);
17. Nicaragua: Penal Code, art. 509 ("uses children under eighteen years to participate actively in hostilities");
18. New Zealand: International Crimes and International Criminal Court Act, art. 11(2)(b) and (d) (2000);
19. Norway: Military Penal Code, section 108 ("any contravention of provisions relating to the protection of persons laid down in the two additional protocols to the Geneva Conventions of 1949") (as amended in 1981);
20. Philippines: Army Soldier's Handbook on Human Rights and International Humanitarian Law at p. 55, section 4 ("children shall not be recruited or employed by the government forces to perform or engage in activity necessary to and in direct connection with an armed conflict either as a soldier, guide, courier or in a similar capacity") (2006); Republic Act No. 9851, An Act Defining and Penalizing Crimes against International Humanitarian Law, Genocide and other Crimes against Humanity, section 4(c)(24) ("using children under the age of 18 to participate actively in hostilities") (2009);
21. Russian Federation: Regulations on the Application of IHL, section 81 ("children who have not attained the age of fifteen years shall not be allowed to take part in hostilities") (2001); Criminal Code, art. 359(2) ("...for use in armed conflict or hostilities") (taking into account amendments as of 2004);
22. Rwanda: Law Repressing the Crime of Genocide, Crimes against Humanity and War Crimes, art. 10 ("forcing children under 18 years to take part in hostilities") (2003);
23. Slovenia: Penal Code, art. 378 ("exploitation for active participation in hostilities") (2007);
24. Spain: Penal Code, art. 612(3) ("breaches any treaty provisions providing for special protection of children") (1995);
25. Switzerland: Criminal Code, section 264(f) ("using them to participate in armed conflict") (2012);
26. Ukraine: IHL Manual, section 1.4.11 ("children who have not attained the age of fifteen years shall not be allowed to take part in hostilities") (2004);
27. United Kingdom: LOAC Manual, section 9.9.1 ("Steps must be taken to ensure that those aged under fifteen years ... do not take a direct part in hostilities") and section 15.7. ("It is prohibited to conscript or enlist children under the age of fifteen years into armed forces or groups" or to use them "to participate actively in hostilities" within the context of an internal armed conflict) (2004); International Criminal Court Act, art. 50(1) and schedule 8, sections 8(2)(b)(xxvi) and 8(2)(e)(vii) ("use to participate actively in hostilities") (2001);
28. United States: Child Soldiers Accountability Act, section 2442(a)(2) ("uses a person under 15 years to participate actively in hostilities") (2008).

The United States uses the following definition of direct participation in hostilities (DPH) in the Child Soldiers Accountability Act of 2008:

"(1) The term 'participate actively in hostilities' means taking part in —

- (A) combat or military activities related to combat, including sabotage and serving as a decoy, a courier, or at a military checkpoint; or
- (B) direct support functions related to combat, including transporting supplies or providing other services."

It also uses the following definition of DPH in its declaration submitted upon ratification of the Optional Protocol:

(B) "the phrase 'direct part in hostilities' –

- (i) means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy; and
- (ii) does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment."

In interpreting and applying the provisions of subsection 1, States may wish to consider the Recommendations of the ICRC Concerning the Interpretation of International Humanitarian Law Relating to the Notion of Direct Participation in Hostilities (2009). It provides in relevant parts that direct participation in hostilities requires an act that (a) adversely affects the military capacity of a party to an armed conflict (threshold of harm), in which there is (b) a direct causal link between the act and the resulting harm (direct causation), and the act (c) is specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).

In *Prosecutor v. Thomas Lubanga Dyilo*, the Court defined 'active participation in hostilities' to include "a wide range of activities, from those children on the front line through to the boys and girls who are involved in a myriad of roles that support the combatants." (*Prosecutor v. Thomas Lubanga Dyilo*, Judgment Pursuant to Article 74 of the Statute, ICC-01/04-01/06, 14 March 2012).

17 Optional Protocol, art. 3.

Below are examples of safeguards maintained by States in respect of ensuring voluntary recruitment of persons under 18 years of age into the armed forces as detailed in the Declaration submitted upon ratification of the Optional Protocol to the CRC. For more information, visit [Optional Protocol Status of Declarations and Reservations](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&msgid=IV-11-b&chapter=4&lang=en#EndDec), available at <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&msgid=IV-11-b&chapter=4&lang=en#EndDec> (last visited 16.03.2012).

Azerbaijan

"Pursuant to article 3 of the protocol, the Republic of Azerbaijan declares that in accordance with the Law of the Republic of Azerbaijan on the military service of 3 November 1992, the citizens of the Republic of Azerbaijan and other persons, who are meeting the defined requirements of the military service, may voluntarily enter and be admitted in age of 17 the active military service of the cadets military school. The legislation of the Republic of Azerbaijan guarantees that this service shall not be forced or coerced, shall be realized on the basis of deliberative consent of the parents and the legal representatives of those persons, that those persons shall be provided with the full information of the duties regarding this service, and that the documents certifying their age shall be required before the admission to the service in the national armed forces."

Germany

"The Federal Republic of Germany declares that it considers a minimum age of 17 years to be binding for the voluntary recruitment of soldiers into its armed forces under the terms of art. 3, paragraph 2 of the Optional Protocol. Persons under the age of 18 years shall be recruited into the armed forces solely for the purpose of commencing military training.

The protection of voluntary recruits under the age of 18 years in connection with their decision to join the armed forces is ensured by the need to obtain the consent of their legal guardian and the indispensable requirement that they present an identification card or passport as a reliable proof of their age."

India

"(i) The minimum age for recruitment of prospective recruits into Armed Forces of India (Army, Air Force and Navy) is 16 years. After enrollment and requisite training period, the attested Armed Forces personnel is sent to the operational area only after he attains 18 years of age;

(ii) The recruitment into the Armed Forces of India is purely voluntary and conducted through open rally system/open competitive examinations. There is no forced or coerced recruitment into the Armed Forces."

Poland

"1. Under the Polish law the minimum age in the case of obligatory recruitment of the Polish citizens into the national Armed Forces is eighteen (18) years. 2. Under the Polish law the minimum age for the voluntary recruitment of the Polish citizens into the national Armed Forces is seventeen (17) years. Joining the Polish Armed Forces is really voluntary and a candidate is obliged to show a special document certifying the date of his/her birth. Moreover the consent of the person's parents or legal guardians is required before the admission to the service."

Singapore

"1. The minimum age at which persons may be voluntarily recruited or enlisted into the Singapore Armed Forces is 16 years and 6 months; and
2. The Republic of Singapore maintains the following safeguards in respect of voluntary recruitment or enlistment of persons below the age of 18 years into the Singapore Armed Forces –

The person is required to produce documentary proof of age, including an authentic birth certificate and identity card;
Written consent of a parent or legal guardian of the person is required; and

The person is fully informed of the duties involved in military service by the Singapore Armed Forces through, among other things, informational brochures and career counselors to explain the demands of military life."

The United Kingdom

"1. The United Kingdom Armed Forces are manned solely by volunteers; there is no compulsory recruitment.

2. A declaration of age, backed by an authoritative, objective proof (typically the production of an authentic birth certificate) is an integral and early requirement in the recruitment process. Should an individual volunteering to enter the United Kingdom Armed Forces be found either by their own declaration or by inspection of supporting evidence of age to be under 18 years of age, special procedures are adopted.

These procedures include:

- the involvement of the parent(s) or legal guardian(s) of the potential recruits:

- clear and precise explanation of the nature of duties involved in military service to the [sic] both the individual and their parent(s)/guardian(s); and

- as well as explaining the demands of military life to the individual volunteer and establishing that he/she remains a genuine volunteer, the requirement that the parent(s) or guardian(s), having been similarly informed, freely consent to the individual's entry into the Armed Forces and duly countersign the appropriate application or other appropriate recruitment process forms."

United States

Section 505(a) of Title 10 of the United States Code provides that "the Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, of qualified, effective, and able-bodied persons who are not less than seventeen years of age nor more than forty-two years of age. However, no person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control."

Additionally, in its Declaration the United States lists the following safeguards:

"(c) each person recruited into the Armed Forces of the United States receives a comprehensive briefing and must sign an enlistment contract that, taken together, specify the duties involved in military service; and

(d) all persons recruited into the Armed Forces of the United States must provide reliable proof of age before their entry into military service."

- 18 AP I, art. 77(2), CRC, art. 38(3) and the Optional Protocol, art. 5.
- 19 Protocol Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of International Armed Conflicts, (Protocol II), art. 77(2) (1977), available at <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument> (last visited 24.4.2012).
- 20 Protocol Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of Non-International Armed Conflicts, (Protocol II), art. 4(3) (1977), available at <http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument> (last visited 24.4.2012).
- 21 Convention on the Rights of the Child, art. 38 (1989), available at <http://www2.ohchr.org/english/law/pdf/crc.pdf> (last visited 24.4.2012).
- 22 Statute of the International Criminal Court, arts. 8(2)(b)(xxvi) and 8(2)(e)(vii) (1998), available at <http://untreaty.un.org/cod/icc/statute/rome.htm> (last visited 24.4.2012).
- 23 International Criminal Court, Elements of Crime, U.N. Doc. ICC-ASP/1/3 (part II-B) (2002); Knut Dörmann, Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary at p. 375 and 470 (Cambridge University Press 2003).
- 24 ILO Convention No. 182 on the Worst Forms of Child Labour (1989), available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm> (last visited 24.4.2012).
- 25 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000), available at <http://www2.ohchr.org/english/law/crc-conflict.htm> (last visited 24.4.2012).
- 26 ICRC Customary IHL Study, Rules 136 and 137, available at http://www.icrc.org/customary-ihl/eng/docs/v1_rul (last visited 24.4.2012).
- 27 ICRC Customary IHL Study, Rule 156 (2005), available at http://www.icrc.org/customary-ihl/eng/print/v1_rul_rule156 (last visited 13.6.2012).
- 28 *Id.*
- 29 *Id.*
- 30 As stated earlier, the military manuals listed here are cited in the ICRC Customary IHL Study (2005) and in certain cases reiterate the State's international obligations without necessarily adding implementing legislation.
- 31 Argentina: Leyes de Guerra, PC-08-01, Público, Edición 1989, Estado Mayor Conjunto de las Fuerzas Armadas, aprobado por Resolución No. 489/89 del Ministerio de Defensa, section 4.12 (1990), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 32 Argentina: Leyes de Guerra, PC-08-01, Público, Edición 1989, Estado Mayor Conjunto de las Fuerzas Armadas, aprobado por Resolución No. 489/89 del Ministerio de Defensa, section 7.04 (1990), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 33 Australia: Criminal Code Act, sections 268.68 and 268.88 (taking into account amendments up to Act No. 80 of 2011) available at <http://www.comlaw.gov.au/Details/C2012C00306> (last visited 29.03.2012).
- 34 Australia: The Manual of the Law of Armed Conflict, Australian Defence Doctrine Publication 06.4, Australian Defence Headquarters, section 9.50 (2006) as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 137: Participation of Child Soldiers in Hostilities. Note: The LOAC Manual (2006) replaces both the Defence Force Manual (1994) and the Commanders' Guide (1994).
- 35 Australia: Defence Instructions, PERS 33-4 (2008), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 137: Participation of Child Soldiers in Hostilities.
- 36 Azerbaijan: Criminal Code, art. 116.0.5 (1999), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 37 Azerbaijan: Law on the Rights of the Child, art. 37 (1998), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 137: Participation of Child Soldiers in Hostilities.
- 38 Belarus: Law on the Rights of the Child, art. 29 (1993), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 39 Belarus: Criminal Code, art. 136(5) (1999), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 40 Committee on the Rights of the Child, *Concluding Observations: Belgium*, 42nd session, CRC/C/OPAC/BEL/CO/1 (2006).

- 41 Cameroon: Droit des conflits armés et droit international humanitaire, Manuel de l'instructeur en vigueur dans les forces de défense, Ministère de la Défense, Présidence de la République, Etat-major des Armées, at p. 90, section 351(5) (2006), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 42 *Id.* at p. 29, section 131; see also p. 49, section 213, p. 75, section 321 and p. 132, section 411(5).
- 43 Canada: The Law of Armed Conflict at the Operational and Tactical Levels, Office of the Judge Advocate General, section 1714(1)(c) (2001), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 44 Canada: National Defence Act, section 34 (1985), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 137: Participation of Child Soldiers in Hostilities.
- 45 Canada: Crimes Against Humanity and War Crimes Act, section 4(1) and (4) (2000), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 137: Participation of Child Soldiers in Hostilities.
- 46 Colombia: Law on Judicial Cooperation, arts. 13 – 14 (1997), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 137: Participation of Child Soldiers in Hostilities.
- 47 Colombia: unofficial translation of the Penal Code, Law No. 599, art. 162 (2000).
- 48 Colombia: unofficial translation of the Law on Childhood and Adolescence, No. 1098, art. 20(7) (2006).
- 49 Colombia: Derecho Internacional Humanitario – Manual Básico para las Personerías y las Fuerzas Armadas de Colombia, Ministerio de Defensa Nacional at p. 75 (1995), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 50 Congo: Genocide, War Crimes and Crimes against Humanity Act, art. 4 (1998), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 51 Denmark: Military Criminal Code, section 36(2) (2005), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 52 Ethiopia: Defence Force Proclamation No. 27/1996, section 4(3) (1996).
- 53 Federal Republic of Ethiopia: Criminal Code (Proclamation No. 414/2004), section 270(m) (2004), available at http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=ETH&p_classification=01.04&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (last visited 24.4.2012).
- 54 Finland: Ministry of Justice, Unofficial translation of the Criminal Code (39/1889), chapter 11, section 5(1), para. 5 (amendments up to 940/2008 included).
- 55 *Id.* at chapter 11, section 5(2).
- 56 Fiji: Employment Relations Promulgation, section 91(a) (2007), available at http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=FJ&p_classification=01.02&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (last visited 24.4.2012).
- 57 Fiji: Employment Relations Promulgation, section 256(a) (2007).
- 58 France: Manuel de droit des conflits armés, Ministère de la Défense, Direction des Affaires Juridiques, Sous-Direction du droit international humanitaire et du droit européen, Bureau du droit des conflits armés at p. 40; see also p. 63 (2001), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 59 Germany: Humanitarian Law in Armed Conflicts – Manual, DSK VV207320067, edited by The Federal Ministry of Defence of the Federal Republic of Germany, VR II 3, August 1992, English translation of ZDv 15/2, Humanitäres Völkerrecht in bewaffneten Konflikten – Handbuch, section 306; see also section 505 (1992) as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 60 Germany: Law Introducing the International Crimes Code, art. 1, section 8(1)(5) (2002), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 61 Georgia: Criminal Code, art. 413(d) (1999), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 62 Republic of Indonesia: Child Protection Act No. 23, art. 63 (2002).
- 63 *Id.* art. 87 (2002).
- 64 Ireland: Geneva Conventions Act, section 4(1)(4) (1962), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 65 Jordan: Military Service Law No. 2, chapter 2, art. 5 (1972), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 66 Kenya: Law of Armed Conflict, Military Basic Course (ORS), 4 Précis, The School of Military Police, Précis No. 2 at p. 8 (1997), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 67 Kenya: The Children Act, sections 10(2) and 29 (No. 8 of 2001), available at <http://www.unhcr.org/refworld/docid/47975f332.html> (last visited 10.02.2012).
- 68 Kyrgyz Republic: Criminal Code, art. 124, available at <http://www.icrc.org/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/705a3f3b34f0090ec12577440047742c!OpenDocument> (last visited 12.03.2012).
- 69 Libyan Arab Jamahiriya: Law No. 40 on Service in the Armed Forces, art. 6 (1974), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 70 Lithuania: official translation of the Criminal Code, art. 105(1 – 2) (last amended in 2008).
- 71 Malawi: National Service Act, art. 4 (1951), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 72 Malaysia: Armed Forces Act, section 18 (1972), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 73 Mali: Penal Code, art. 31(i)(26) (2001), as cited in the ICRC Customary IHL Study Online Edition on Practice Relating to Rule 136: Recruitment of Child Soldiers.
- 74 Montenegro: Criminal Code, section 444(1 - 3) (Official Gazette of the Republic of Montenegro No. 70/2003, and Correction, No 13/2004), available at <http://legislationline.org/documents/section/criminal-codes> (last visited 3.08.2012).

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